

1-4.000

STANDARDS OF CONDUCT

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1-4.010 Introduction

Under Executive Order 11222, each agency of the federal government is responsible for issuing regulations on the standards of conduct, including ethical conduct, for its employees. It is required that these standards be brought to the attention of each employee annually. The Department follows the government-wide standards of conduct promulgated by the Office of Government Ethics (OGE) at 5 C.F.R. Chapter XVI, especially Parts 2634, 2635, 2636, and 2637; and Department of Justice Order 1735.1A. In addition, there are supplemental regulations for the Department of Justice which address, among other things, outside employment. *See* 5

C.F.R. § 3801.101-106. Every current employee should be reminded annually of the existence of the standards of conduct contained in 5 C.F.R. Chapter XVI and DOJ Order 1735.1A, and where to review a copy. All employees should review these standards carefully and bring any problems to the attention of their supervisors. Also, all employees are subject to the provisions of 18 U.S.C. § 201 et seq., making criminal certain activities by employees or former employees.

Any questions concerning the applicability of 5 C.F.R. § 2634 et seq., DOJ Order 1735.1A, the statutes upon which these regulations are based (see discussion below), or any other applicable professional standards should be addressed to the Ethics Advisors in the Districts. For example, an employee should contact his/her Ethics Advisor when he/she: (1) is offered a gift in connection with his/her job, including, in certain cases, from another employee, and especially when the offer involves an award, the payment of money, travel and/or lodging expenses, or free attendance at any event; (2) is assigned a matter where his/her official actions may affect his/her financial interest or the interest of any person with whom he/she is seeking or negotiating for future employment; (3) is asked to participate in a matter that might cause a reasonable person to question his/her impartiality; (4) might realize private gain through the use of his/her official position, non-public information, government property, and/or official time; or (5) pursues outside employment or other outside activity that may conflict with his/her official duties.

The Deputy Designated Agency Ethics Official (DDAEO) for the offices of the United States Attorneys and the Executive Office for United States Attorneys (EOUSA) is the Legal Counsel, EOUSA. Unless otherwise indicated in this chapter, "employee" means an employee of EOUSA or a United States Attorney's Office. The DDAEO is authorized to review requests to engage in outside activities employment or other matters which might appear inappropriate or improper under the various applicable standards of conduct. In many cases, employees should, and in some cases, must (*see, e.g.*, USAM 1-4.320), seek approval from the DDAEO before engaging in certain outside activities. Although the role of the DDAEO is to determine whether the activity violates any of the various standards of conduct mentioned in this chapter, the DDAEO will also consider, based on the representations of the requestor, whether engaging in the activity would cause a reasonable person with knowledge of the relevant facts to question the employees impartiality. Approvals are based solely on the information provided by the employee, and may be invalid if the employee provided incorrect or incomplete information.

Disciplinary action for violating a provision of 5 C.F.R. Part 2635 or any agency supplemental regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee made full disclosure of all relevant circumstances. Reliance on any other individual, such as a private attorney, will not shield an employee from discipline. Further, when the employee's conduct violates a criminal statute, reliance on the advice of the DDAEO cannot ensure that the employee will not be prosecuted. Such reliance is, however, a factor considered by the Department in selection of such cases for prosecution.

1-4.100 Allegations of Misconduct by Department of Justice Employees -- Reporting Misconduct Allegations

Department employees shall report to their United States Attorney or Assistant Attorney General, or other appropriate supervisor, any evidence or non-frivolous allegation of misconduct that may be in violation of any law, rule, regulation, order, or applicable professional standard. The supervisor shall evaluate whether the misconduct at issue is serious, and if so shall report the evidence or non-frivolous allegation to the Office of Professional Responsibility (OPR) or to the Office of the Inspector General (OIG), and to EOUSA, as set forth below.

If the supervisor was involved in the alleged violation, the supervisor must bring the evidence or allegation to the attention of a higher-ranking official. An employee who wishes to report directly to OPR or OIG may do so.

When a supervisor is uncertain whether an allegation should be referred, the supervisor may telephone OPR or OIG to determine what action to take.

Reporting an allegation raises no inference that the allegation is well-founded.

All employees have a duty to cooperate with internal investigations conducted by OPR, OIG or another internal agency official.

A. Office of Professional Responsibility of the Department of Justice. Evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice shall be reported to OPR.

B. Offices of Professional Responsibility of the Federal Bureau of Investigation and the Drug Enforcement Administration. Evidence and non-frivolous allegations of serious misconduct by FBI or DEA employees shall be reported to the Office of Professional Responsibility of the FBI or DEA. Employees of the FBI or DEA who wish to report an allegation outside of their component may report to the Deputy Attorney General.

C. Office of the Inspector General. Evidence and non-frivolous allegations of waste, fraud, abuse or other misconduct by and Department employee, except as set forth in (A) and (B) above shall be reported to OIG.

D. Executive Office for United States Attorneys. Any evidence or non-frivolous allegation involving an employee of a United States Attorney's office or EOUSA shall also be reported to the Legal Counsel, EOUSA.

1-4.120 Reporting Allegations in the Course of Judicial Proceedings

A. Judicial Statements Concerning Misconduct. Department attorneys shall report to their supervisors any statement by a judge or magistrate indicating a belief that misconduct by a Department employee has occurred, or taking under submission a claim of misconduct. Supervisors shall report to DOJ OPR immediately any evidence or non-frivolous allegation of serious misconduct.

B. Judicial Findings of Misconduct and Requests for Review. Whenever a judge or magistrate makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, the finding or request shall be reported immediately to the employee's supervisor and to DOJ OPR, regardless whether the matter is regarded as serious or non-serious.

1-4.130 Litigation Concerning Misconduct Allegations

A. Supervisory Review of Court Filings. Before any pleading or other document concerning any non-frivolous allegation of serious misconduct is filed, whether in the district court or on appeal, it must be reviewed by a supervisor who is not implicated by the allegation.

B. Recusal Upon Finding of Misconduct. A Department attorney who is found to have engaged in misconduct shall not represent the United States in litigation concerning the misconduct finding, unless approval is obtained from the responsible United States Attorney or Assistant Attorney General.

C. Consultation with DOJ OPR. The supervisor may consult with DOJ OPR before filing any pleading relating to a misconduct allegation, and must apprise DOJ OPR of any significant developments after a matter has been reported to DOJ OPR pursuant to this section.

1-4.140 Office of Professional Responsibility Procedures

A. Preliminary Review. Upon receiving an allegation within its jurisdiction, DOJ OPR shall conduct an immediate preliminary review. DOJ OPR shall open an investigation only if it concludes that further investigation is warranted.

B. Review of Judicial Findings. If a judge makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, DOJ OPR shall conduct an expedited inquiry without awaiting further judicial or appellate proceedings.

C. Notification at Conclusion of Investigation. Upon the completion of an investigation, DOJ OPR shall promptly notify the subject of the allegation, the employee's supervisor, and the complainant of the results.

D. Bad Faith Complaints. If DOJ OPR determines that an allegation made by an attorney was made in bad faith, as a result of gross negligence, or in reckless disregard for the truth, it shall report the complainant's misconduct to the appropriate entity established by the local authorities to handle attorney misconduct.

E. Former Employees. DOJ OPR shall obtain the approval of the Deputy Attorney General Before declining to investigate or terminate an investigation on the ground that an employee has left the Department. The decision whether to conduct an investigation under such circumstances will be made on a case-by-case basis.

F. Public Disclosure of OPR Findings. DOJ OPR will determine whether to publish a summary of one of its reports in accordance with a memorandum to OPR from the Deputy Attorney General dated December 13, 1993. For a copy, please contact the Legal Counsel staff at 202-514-4024.

1-4.200 Public Financial Disclosure Reports

The Ethics in Government Act of 1978, as amended (the "Act"), requires the filing of a Public Financial Disclosure Report (SF-278) by employees in statutorily-specified positions. In general, these positions require the exercise of significant policy-making and command discretion. In each agency the following employees, including Special Government employees, serve in "covered" positions:

A. Employees in senior positions under a pay system other than the General Schedule must file when their positions' rate of basic pay is equivalent to or greater than 120% of the minimum rate of basic pay for GS-15. *See* 5 C.F.R. § 2634.202(c). Currently, the minimum rate of basic pay for GS-15 is \$83,160. Assistant United States Attorneys who are in paid supervisory positions or serving as a Senior Litigation Counsel and Special Government Employees are required to file.

B. Employees who serve in positions classified above GS-15 under the General Schedule. Senior Executive Service Employees are required to file.

C. Uniformed officers paid at or above pay grade 0-7.

D. Schedule C and other civilian employees, regardless of pay grade, whose positions are excepted from the competitive service because of their confidential or policy-making character.

E. Each agency's primary Designated Agency Ethics Official, regardless of pay grade. Other ethics officials need file only if they are in another specified category.

F. Presidential nominees requiring Senate confirmation. All United States Attorneys are required to file.

G. All administrative law judges.

A covered employee must file a "new entrant report" within 30 days after assuming a covered position. Reports must be filed each May 15th for the preceding calendar year, and within 30 days after leaving his or her covered position for the period between the last annual report and the date employment is terminated. 5 C.F.R. §§ 2634.201 and 202. Reports are not required from employees who serve less than 60 days. 5 C.F.R. § 2634.204. Anyone who files a Public Financial Disclosure Report more than 30 days after its due date, including any extensions which have been granted, shall pay a late filing fee of \$200. 5 C.F.R. § 2634.704.

The Attorney General may bring a civil action against any person who does not file, files a false report, or fails to report required information. Employees who file a false report may also be prosecuted. 5 C.F.R. § 2634.701.

This report may be disclosed upon request to any requesting person pursuant to 5 C.F.R. § 2634.603.

1-4.220 Confidential Financial Disclosure Reports

The Ethics in Government Act of 1978, as amended, requires the filing of a Confidential Financial Disclosure Report (OGE Form 450) by all special government employees, serving with or without compensation, including those who serve on federal advisory committees, who are not serving as a representative of an industry or another entity or who are not already Federal employees and who are not already required to file a public financial disclosure report. The Act also requires the filing of confidential financial disclosure reports by employees who occupy a position classified at GS-15 or below of the General Schedule, or whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule, or employees in any other position determined by the designated agency ethics official to be of equal classification; if:

A. Their duties and responsibilities require them to participate personally and substantially through decision or the exercise of significant judgement in taking a government action regarding:

- contracting or procurement;
- administering or monitoring a grant;
- regulating or auditing any non-federal entity;
- other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-federal entity; or

B. The duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive Order, rule, or regulation applicable to or administered by that employee.

Within EOUSA and the United States Attorneys' offices the following employees are required to file: ● Assistant United States Attorneys (line AUSAs) (currently, instead of filing an OGE Form 450, AUSAs are using an alternative method approved by the Office of Government Ethics. The chosen alternative method is the use of a "Conflict of Interest Certification" which requires all affected Assistants to certify that no conflict of interest exists in each matter they undertake);

- Special government employees (which includes special AUSAs);
- All Administrative Officers and employees with procurement/and or contracting authority, and
- Employees involved in reviewing grant applications. (Example: "Weed and Seed" grant matters).

Those employees who currently file the public financial disclosure report will not be required to file the confidential report. *See* 5 C.F.R. § 2634.904.

An employee may be excluded from filing if the duties of the position make remote the possibility of a conflict, if the duties involve such a low level of responsibility because there is a substantial degree of supervision and review; or the effect of any conflict on the integrity of the government would be insubstantial, or an alternative procedure is used. *See* 5 C.F.R. § 2634.905(c). An employee must file a new entrant report within 30 days after assuming a covered position and annually by October 31st. Employees who are expected to work 60 days or less need not file. Employees are not required to file a termination report upon leaving their covered positions. 5 C.F.R. § 2634.903.

The Attorney General may bring a civil action against any person who does not file, files a false report, or fails to report required information. Employees who file a false report may also be prosecuted. 5 C.F.R. § 2634.701.

The primary use of the information on this form is to determine compliance with applicable Federal conflict of interest laws and regulations.

Effective June 10, 1994, United States Attorneys were redelegated the authority to act as Deputy Designated Agency Ethics Officials for the review and certification of Confidential Financial Disclosure Reports filed by reporting individuals within their districts. If they have any questions with respect to this authority, they should contact the Legal Counsel, EOUSA.

1-4.300 DOJ Employee Participation in Outside Activities -- Termination Agreements/Contingency Fees

Upon entering on duty, Department attorneys must, in general, withdraw from all cases they are currently handling. Interests in pending matters, such as contingency fees, should be addressed as part of the termination of their private practice. Experience indicates that "cashing out" the sometimes speculative nature of these interests has created problems for incoming employees. In negotiating a termination agreement with a former firm or business associates, an employee should be aware that federal criminal law prohibits Federal employees from participating in any matter, in their official capacity, in which they have a financial interest. 18 U.S.C. § 208, 5 C.F.R. § 2635.401. Federal law also prohibits Federal employees, other than in the proper discharge of their official duties, from representing anyone before a Federal agency or court in connection with a matter in which the United States is a party or has an interest. 18 U.S.C. § 205. In addition, please be mindful of 18 U.S.C. § 209 which prohibits an employee from receiving a salary from any source other than the United States as compensation for his/her services.

In light of the above statutes, the Department has never permitted incoming employees to retain any interest in matters pending before Federal departments (or agencies) or in which the United States is a party or has an interest. If the litigation does not involve the United States and the immediate "cashing out" will create an undue financial burden on an employee or the law firm, the Department has, on limited occasions, permitted the retention of a contingent interest. If, after exhausting all possible avenues for "cashing out" an interest, an employee is unable to do so, he/she should contact the EOUSA Legal Counsel's office regarding the disclosure of contingency fees. The number of interests which an employee may retain must be kept to an absolute minimum and the financial interest must be reduced to a sum certain or a fixed percentage. It should be noted that while these matters are pending, an employee must be disqualified from handling any matter involving the attorney and the law firm(s) handling the referred matter.

1-4.320 Outside Activities Generally

Employees may not engage in outside activities, including employment, that conflict with their official duties. An activity conflicts with an employee's official duties if it would require him to disqualify himself from matters so critical that his ability to perform his official duties would be impaired. 5 C.F.R. § 2635.802. Employees are cautioned that even if an outside activity or employment is not prohibited under this regulation or by statute, it may violate other principles or standards set forth in 5 C.F.R. § 2635 et seq, or laws concerning other issues, such as those restricting certain political activities. *See* USAM 1-4.400.

A. Use of Title. With rare exceptions, employees engage in outside activities in their private rather than official capacities. Therefore, when engaging in outside activities in their private capacity, employees may not indicate or represent in any way that they are acting on behalf of the Department, or that they are acting in their official capacity. Thus, an employee may not use office letterhead, agency or office business cards, or other material or equipment that would disclose the employee's official title or position if they engage in an outside activity in their private capacity. The incidental identification of an employee's position or office is not prohibited, but if this information is incidentally released it becomes the responsibility of the employee to advise all individuals concerned that he or she is acting in his or her individual capacity and not as a representative of the Department.

B. Use of Official Time or Excused Absence. With limited exceptions with respect to pro bono or other volunteer work (*see* USAM 1-4.350), employees engaging in outside activities do so on their own time.

C. Use of Office Resources. As a general rule, employees may use government property only for official business or as authorized by the government. 5 C.F.R. §§ 2635.101(b)(9), 2635.704(a). However, employees are allowed to use equipment which involves only negligible expense, such as electricity, ink, small amounts of paper, and ordinary wear and tear. In addition, they are allowed limited use of telephones and faxes for local calls, or if they are charged to non-government accounts. Finally, use of library equipment at negligible expense is also permitted. 5 C.F.R. § 3801.105. This policy does not authorize the use of commercial electronic databases when there is an extra cost to the government. It also does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail, and 41 C.F.R. (FPMR) § 201-21.601 (governing the ordinary use of long-distance telephone services.)

D. Clerical Support. Under no circumstances may employees require others, including support staff, to provide assistance with respect to outside activities. Care should be taken in requesting their assistance on their own time even for compensation, since subordinates may believe that they really have no choice but to say yes. It is especially coercive to ask them to volunteer their outside time without compensation, but if support staff on their own volunteer to support a pro bono or other voluntary service outside activity, their offer may be accepted.

E. Approval Requirements. Employees must obtain prior written approval from the EOUSA Legal Counsel for outside employment which involves: (1) the outside practice of law; or (2) a subject matter, policy, or program that is in his or her component's area of responsibility. The EOUSA Legal Counsel can approve requests to engage in the outside practice of law only when it is uncompensated and in the nature of community service, or when the employee will be representing himself, his parents, his children or his spouse. If an employee desires to practice law for compensation, he must obtain approval from the Deputy Attorney General through the EOUSA. United States Attorneys and their Assistants should freely consult with EOUSA on these matters.

F. Conflicts of Interest. Employees may not engage in outside activities that create or appear to create a conflict of interest with their official duties. Such a conflict exists when the outside activity would: (1) require the recusal of the employee from significant aspects of his or her official duties (5 C.F.R. § 2635.802(b)); (2) create an appearance that the employee's official duties were performed in a biased or less than impartial manner (5 C.F.R. § 2635.502); or (3) create an appearance of official sanction or endorsement (5 C.F.R. § 2635.702(b)).

With limited exceptions, outside activities may not include the representation of third parties before the federal government. 18 U.S.C. § 205.

All employees are prohibited by statute from providing legal assistance -- with or without compensation -- in any case in which the United States is a party or has a direct and substantial interest. 18 U.S.C. §§ 203, 205.

All employees are prohibited from providing any outside professional services in criminal or habeas corpus matters in any court, whether with or without compensation.

1-4.330 Teaching, Speaking, and Writing

Employees who wish to undertake teaching or speaking engagements or who wish to write for publication are directed to consult 5 C.F.R. § 2635.807 which details the circumstances upon which compensation may be received and the extent to which an employee's title may be used. They should also consult with their United States Attorney. Employees should be cautious to avoid any conflict of interest with their position and to ensure that no interference with the performance of their official duties occurs. In some instances they may need to use a disclaimer. Assistant United States Attorneys must generally take annual leave or leave without pay for any time required for engaging in these activities during normal business hours. It is highly advisable for employees to discuss these issues with the Ethics Advisor in their District before undertaking a teaching or lecturing assignment.

1-4.340 Civic Organizations, Professional Boards and Committees, and State Grievance Committees

While certain activities can be easily undertaken without creating problems, service on national and local bar committees, state and municipal commissions, corporate boards of directors, arbitration panels, state grievance committees, and similar organizations, with or without remuneration, could have the potential for creating a conflict of interest or an appearance of a conflict of interest. Employees should contact the EOUSA Legal Counsel's office whenever questions arise and should seek prior approval before serving in a leadership position in a bar association. United States Attorneys' involvement in crime prevention efforts is addressed in the DOJ publication entitled "Legal and Ethical Issues Surrounding United States Attorneys' Involvement in Crime Prevention Efforts" issued October 1994.

1-4.350 Pro Bono Work

Executive Order 12988, Section 2, provides that "All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation or other rule or guideline." On March 8, 1996, the Attorney General signed the Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services. This statement summarized existing Department of Justice policies and rules on issues such as leave, conflict of interest, and use of property. It also encourages all employees to set a voluntary personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service. The Department does not restrict the type of pro bono activities in which employees engage, provided that such activities do not violate any statutory or regulatory restrictions, and provided also that they genuinely are in the public interest. Such activities include, but are not limited to, the provision of legal service to:

- Persons of limited means or other disadvantaged persons;
- Charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organization purpose;
- Individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
- Activities for improving the law, the legal system, or the legal profession.

Similarly, with respect to other volunteer activities besides pro bono legal work, the Department does not seek to restrict the type of activity as long as it does not violate statutory or regulatory restrictions. All such activities, like any other outside activities, are subject to limitations, including compliance with all conflict of interest statutes and regulations, and compliance with all local unauthorized practice of law statutes and fee requirements. *See* USAM 1-4.320F.

The approval requirements for pro bono and volunteer service are the same as for any other outside activities. *See* USAM 1-4.000 and 1-4.320E. Since pro bono work by definition is the uncompensated outside practice of law, approval must be sought, but the component head has the authority to approve such requests, as opposed to the outside practice of law for compensation, which only the Deputy Attorney General can approve. In some circumstances it may be possible for the uncompensated outside practice of law to be pre-approved. This could occur in connection with certain legal services or bar association programs. If a district is interested in participating in such a program, it should contact the Legal Counsel, EOUSA, to have the program reviewed. If appropriate, participation in the program will be approved by the Director, EOUSA.

With respect to volunteer services other than pro bono legal work, approval may have to be obtained from the DDAEO, depending on the nature of the volunteer service, and in any case it is advisable for the employee to seek approval. *See* USAM 1-4.320. Some types of volunteer work have been pre-approved. *See* Memorandum of March 15, 1996, from Director, EOUSA, to all employees. Department employees are encouraged to participate in pro bono and volunteer activities outside their regular working hours. As a general rule, it is inappropriate to pay an employee for time engaged in such activities. However, in limited circumstances, it may be appropriate for a United States Attorney to approve such participation during duty time

without charge to leave. Such excused absences should be limited, however, to those situations in which the employee's volunteer service meets one or more of the following criteria: is directly related to the Department's mission; is officially sponsored or sanctioned by the Attorney General; or will enhance the professional development or skills of the employee in his or her current position. The Attorney General encourages employees to participate in the Department-sponsored mentoring programs and volunteer activities that further the Department's program priorities. For example, the strong leadership skills of many Department employees could be put to good use helping at-risk youth in classrooms, youth clubs, shelters, and midnight basketball programs. EOUSA's LECC/Victim Witness Staff has a Volunteer Services Program Coordinator who may be contacted for information about such programs. Limitations on the use of an employee's title or position and on the use of office equipment or personnel are the same as for any outside activity. *See* USAM 1-4.320A-D.

1-4.400 Political Activity (the Hatch Act)

On February 3, 1994, the Hatch Act Reform Amendments of 1993 became effective. These Amendments made significant changes to 5 U.S.C. §§ 7321 - 7326, where the Hatch Act and its amendments are codified. Generally, the Amendments removed many restrictions on the participation of government employees in political activities. On September 23, 1994, the United States Office of Personnel Management published its regulations implementing the Amendments in the Federal Register. They are codified at 5 C.F.R. §§ 733.101 through 734.702. On October 11, 1994, the Attorney General issued a memorandum concerning restrictions on the political activities of Department of Justice employees. She exercised her authority to impose on political appointees, including non-career SES and Schedule C employees, restrictions similar to those imposed on all employees prior to the 1993 Amendments. The Amendments themselves excluded career members of the Senior Executive Service, employees of the Criminal Division of the Department of Justice (but not of the Criminal Divisions of the offices of the United States Attorneys), and employees of the Federal Bureau of Investigation. Thus, they too, like political appointees, continue to be under restrictions similar to those which existed before the 1993 Amendments.

Questions regarding the Hatch Act may be directed to the EOUSA Legal Counsel, the Office of Personnel Management, or the Office of Special Counsel.

1-4.410 Restrictions on all Employees

Employees in the Department of Justice may not:

- A. Use their official authority or influence to interfere with or affect the result of an election (5 U.S.C. § 7323(a)(1)).
- B. Solicit, accept or receive a political contribution (5 U.S.C. § 7323(a)(2)), except for a political contribution to a multi-candidate political committee from a fellow member of a federal labor organization or certain other employee organizations, as long as the solicited employee is not a subordinate and the activity does not violate G below.
- C. Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate (5 C.F.R. § 734.303(d)).
- D. Allow their official titles to be used in connection with fundraising activities (5 C.F.R. § 734.303(c)).
- E. Run for nomination or election to public office in a partisan election (5 U.S.C. § 7323(a)(3)), except that in certain designated communities an employee may run for office in a local partisan election but only as an independent candidate and may receive, but not solicit, contributions. 5 C.F.R. § 733.102(d) lists these communities.
- F. Solicit or discourage the political activity of any person who is a participant in any matter before the Department (5 U.S.C. § 7323(a)(4)).

G. Engage in political activity (to include wearing political buttons), while on duty, while in a government occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle (5 U.S.C. § 7324(a).

H. Make a political contribution to their employer or employing authority (18 U.S.C. 603).

1-4.420 Restrictions on Career SES, Criminal Division, and FBI Employees, and all Political Appointees

These employees may not:

- A. Distribute fliers printed by a candidate's campaign committee, a political party, or a partisan political group.
- B. Serve as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions.
- C. Organize or reorganize a political party organization or partisan political group.
- D. Serve as a delegate, alternate, or proxy to a political party convention.
- E. Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.
- F. Organize, sell tickets to, promote, or actively participate in a fund-raising activity of a candidate for partisan political office or of a political party or partisan political group.
- G. Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group.
- H. Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with a candidate, political party, or partisan political group.
- I. Initiate or circulate a partisan nominating petition.
- J. Act as a recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.
- K. Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.
- L. Run for office even in those communities listed in 5 C.F.R. § 733.102(d) in which other Department of Justice employees may run for office.

The restrictions listed above in USAM 1-4.420 A through L apply only to Career SES, Criminal Division, FBI Employees, and all Political Appointees, and are permissible activities for all other employees.

1-4.430 Permissible Activities

All employees may:

- A. Register and vote in any election.
- B. Express opinions as individuals on political subjects and candidates privately and, to the extent consistent with the restrictions above, publicly.
- C. Display a political picture, sticker, badge, or button in situations that are not connected to their official duties, but employees restricted as outlined in 1-4.420 may not distribute such material.
- D. Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization.

- E. Be members of a political party or other political organization and participate in its activities to the extent consistent with the restrictions set forth above.
- F. Sign a political petition as individuals.
- G. Make a financial contribution to a political party or organization, except to one's federal employer.
- H. Take an active part, as a candidate or in support of a candidate, in a nonpartisan election.
- I. Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character.
- J. Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law, subject to the restrictions set forth above about certain employees not undertaking such activity in concert with political entities.
- K. Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise their efficiency or integrity as employees or the neutrality, efficiency or integrity of their agency.

1-4.440 Political Referrals

In addition to restricting or limiting certain political activity, the Hatch Act also prohibits selecting officials or others involved in the examining or appointing process for competitive service positions from receiving or considering a recommendation of an applicant from a Senator or Representative, except as to the character or residence of the applicant.

1-4.500 Gifts Received From Foreign Governments

Public Law No. 95-105, codified at 5 U.S.C. § 7342, governs the receipt and disposition of gifts and decorations tendered by foreign governments to federal employees, their spouses, or dependents.

Under 5 U.S.C. § 7342(c)(1)(B), an employee may, in certain circumstances, accept gifts. Under (B)(i), however, if the gift is tangible and of more than minimal value, currently defined as \$245 (pursuant to regulation in effect until January 1, 1999), the gift becomes the property of the United States, and, under (c)(2) must be deposited for disposal or use by the government. Under (c)(1)(B)(ii), an employee may in certain circumstances accept an intangible gift of foreign travel or expenses for foreign travel entirely outside of the United States valued at more than \$225. Under (c)(3), an employee receiving such a gift must file a statement with the Department, except when acceptance of foreign travel has been authorized in accordance with specific instructions from the Department of Justice. Under § 7342(f), the Department of Justice must submit to the Secretary of State, by January 31 of each year, a list of all such statements filed by employees during the preceding year.

Federal Property Management Regulations (FPMR) Par. 101-41 and Justice Property Management Regulation (JPMR) Part 128-49, prescribe policies and procedures governing utilization, donation, and disposal of gifts and decorations from foreign governments.

In accordance with JPMR Sec. 128-49.201, each United States Attorney's Office is required each year to submit a list of all gifts and decorations valued at greater than \$50.00 received by employees, their spouses, or dependents from foreign governments during the preceding year. The list should be sent to the Executive Office, Attention: Facilities Management and Support Services Staff.

A separate statement containing the following information should be submitted by each employee receiving a gift or decoration:

A. For tangible gifts.

- Name and title of recipient;

- Gift, date of acceptance, estimated value, and current disposition or location;
- Identity of foreign donor and government; and
- Circumstances justifying acceptance.

B. For travel or expenses for travel.

- Name and title of recipient;
- Brief description of travel or travel expenses occurring entirely outside the United States;
- Identity of foreign donor or governments; and
- Circumstances justifying acceptance.

Negative responses may be communicated by telephone to the Facilities Management and Support Services Staff, EOUSA.

1-4.600 Post-Government Employment Restrictions

The Ethics in Government Act, 18 U.S.C. § 207 and the regulations promulgated by the Office of Government Ethics and issued at 5 C.F.R. Parts 2637 and 2641, contain several post-employment conflict of interest restrictions. The Act covers former government employees (including all officers, employees, and special government employees, both attorney and non-attorney) which may actually make or reasonably give the appearance of making unfair use of prior government employment and affiliations. Criminal penalties and disciplinary action may be imposed for violations. The three major restrictions covered by § 207 which are applicable to the United States Attorneys' office are discussed seriatim below. These regulations do not incorporate or supplant restrictions that may be contained in other laws or professional codes of conduct. *See* USAM 1-4.620.

NOTE: The regulations at § 2637 are still considered to be in effect even though they refer to provisions of the Ethics in Government Act prior to its 1991 amendment. Specifically, § 2637.202 refers to 18 U.S.C. § 207(b)(1) when it should now refer to § 207(a)(2), and § 2637.203 should refer to § 207(c) rather than § 207(b)(ii).

1-4.610 Permanent Prohibition Applicable to all Employees

Under 18 U.S.C. § 207(a)(1), all employees, including special Government employees, are permanently prohibited from knowingly making, with the intent to influence, any communication to or appearance before the United States or the District of Columbia on behalf of someone other than him- or herself or the United States or the District of Columbia, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, and in which the employee participated personally and substantially while a government employee.

This paragraph does not prohibit a former government employee from taking actions on his or her own behalf or from representing the United States or the District of Columbia when authorized. The matter has to have involved a specific party or parties at the time of the former employee's participation. Although the matter must have involved a party, the person on whose behalf the former employee seeks to make a communication or appearance does not have to be a party for the communication to be prohibited.

The prohibition is against making a communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or District of Columbia.

1-4.620 Two-Year Restriction for Supervisors

Under 18 U.S.C. § 207(a)(2), all employees, including special Government employees, are restricted for two years after leaving the government from knowingly making, with the intent to influence, any communication to or appearance before the United States or the District of Columbia on behalf of someone other than himself or

herself or the United States or the District of Columbia, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, and which the former employee knows or reasonably should know was pending under his or her official responsibility within a period of one year before the termination of his or her employment.

Sometimes employees lose responsibility over a matter before they leave Government employment. In spite of the plain language of the statute ("within 2 years after the termination of his or her service or employment" and "within a period of 1 year before the termination of his or her service or employment"), OGE regulations explicitly state that the two years run from the date of termination of responsibility if this occurs before separation from the government, and that the prohibition applies to matters pending under the employee's supervision in the one-year period before termination of such responsibility over the matter, not in the one-year period before termination of employment. 5 C.F.R. § 2637.202(e).

This provision applies to supervisors and managers who did not personally handle a matter, but over which they were responsible. It is designed not only to prevent post-employment conflicts of interest, but also, through the one-year "looking back" proviso, to regulate the conduct of current managers who are contemplating resignation or retirement. Specifically, it is designed to prevent them from making managerial decisions that will be to their benefit after they cease being federal employees. Thus, employees responsible for the supervision of a case are barred from representing anyone, not just a party, in connection with that case for two years after their supervisory responsibility ends, because they might otherwise be tempted to facilitate their post-employment practice by the decisions they make as a federal manager. It is designed not only to deal with actual managerial decisions, but also to prohibit even the appearance that a manager would use his or her federal office for future private gain by using his or her authority during his or her last year of service to his or her private advantage.

This paragraph does not prohibit a former government employee from taking actions on his or her own behalf or from representing the United States when authorized. Although the person represented does not have to be a party, as noted above, the matter has to have involved a specific party or parties at the time it was pending under the former supervisor's authority.

The prohibition is against making a communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or District of Columbia.

1-4.630 One-Year "Cooling-Off" Period

Under 18 U.S.C. § 207(c), a senior employee may not make any communication to or appearance before his or her former agency on any matter in which the former employee seeks official action on behalf of any other person, except the United States, within one year after termination of his or her service or employment as such officer or employee.

According to 5 C.F.R. 2641.201(c), the one year runs from the time the individual ceases to be a senior employee, rather than from termination of government employment.

For the purposes of this section, only the United States Attorneys are considered to be "senior" employees.

The matter does not have to involve specific parties, and does not have to have been pending when the individual was the United States Attorney. The statute prohibits former United States Attorneys from contacting their former agency even on matters arising after they ceased being the United States Attorney, if they arise within one year of their departure. It was designed to prevent the use of personal influence based upon past Government affiliations. The prohibition applies even when the United States is not a party and even when it does not have a direct and substantial interest.

Unlike the other prohibitions, this one is limited to communications to or appearances before the employee's former agency. The statute, at § 207(h), allows OGE to designate components within a department to be separate agencies, thus allowing senior employees to make communications to or appearances before other components. At our request, OGE has issued regulations under which, for United States Attorneys, the agency consists only of his or her former district, the office of the United States Marshal for his or her former district, and EOUSA.

NOTE: In 1993, the Department asked OGE to eliminate the local Marshal's office from this definition, so that a former United States Attorney could make a communication or appearance before that entity within one year of no longer being the United States Attorney. The Department was orally advised that OGE would approve this request. However, it has never published a federal register notice amending Appendix B to 5 C.F.R. Part 2641 in this regard, and advises us that until it does so the prohibition still applies.

The other two restrictions allow a former employee to represent the United States or the District of Columbia, when properly authorized, regardless of earlier participation or supervision of the same matter. The one-year "cooling off" period restricts this to representation of the United States, and does not mention the District of Columbia. As with the other restrictions, this one does not preclude a former employee from taking actions on his or her own behalf.

1-4.640 Sanctions

Former employees willfully in violation of § 207 are subject to a sentence of imprisonment for up to five years. If not willful, the maximum sentence is one year. Substantial fines may also be imposed. In addition, offenders are subject to a civil penalty of up to \$50,000 per infraction.

1-4.650 Other Restrictions on Post-Employment Activities

In addition to 18 U.S.C. § 207, the American Bar Association Code of Professional Responsibility, rules of state bar associations, and court decisions restrict the conduct of attorneys who are former government employees and their firms and affiliates. There is nothing in § 207 which prevents courts and bar associations from holding former government employees to standards more demanding than the minimal requirements of the criminal law. *See* 5 C.F.R. 2637.101(c)(9).

Presidential appointees were also asked to sign a "pledge" which subjects them to a 5 year ban on certain activities when they leave the government. All Presidential appointees should be mindful of this additional restriction when they leave the government.

1-4.660 Restrictions on Seeking Employment Outside the Government

Besides restricting certain post-employment activities, law and regulation require employees in certain circumstances to choose between participating in a particular matter and seeking employment. Specifically, 18 U.S.C. § 208 and 5 C.F.R. § 2625.601 preclude an employee from participating in an activity, absent a waiver, if the employee is seeking employment with persons who would be affected by the performance of lack of performance of the employee's official duties. For further information, see August 26, 1996, Agency Ethics Official Memorandum on Seeking Employment in the Private Sector.

1-4.700 Purchase or Use of Certain Forfeited and Other Property

Absent the approval of the Director, EOUSA, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly from the Department of Justice or its agents by his or her spouse or minor children. Approval may be granted only on the basis of a written determination by the Director, EOUSA, that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his or her official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General. 5 C.F.R. § 3801.104.